

**CALENDAR ITEM
C51**

A 35

04/09/02
C. Fossum
M. Hays

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**REVIEW OF LEASE PURSUANT TO
HARBORS AND NAVIGATION CODE SECTION 6304.1**

PARTIES:

Ventura Port District
1603 Anchors Way Drive
Ventura, CA 93001-4229

Sondermann Ring Partners – Ventura Harbor
c/o Douglas R. Ring
11377 West Ocean Blvd.
Los Angeles, CA 90064-1683

LOCATION:

Ventura Harbor, City of San Buenaventura, County of Ventura

PROPOSED LEASE:

The proposed Lease/Option provides for a ground lease of three contiguous parcels of land containing approximately 23 acres for the purpose of development. The development plan proposes a mixed-use complex consisting of 300 residential apartment units, 20,000 square feet of visitor-serving commercial uses, 2.44 acres of public parkland, a public waterfront promenade and a marina. The term of the lease is 50 years. The entire development is located on lands owned by the Ventura Port District lying within the federally confirmed Mexican land grant Rancho San Miguel. The review and approval requirements set forth below are a result of a 1972 amendment to Section 6304.1 of the Harbors and Navigation Code that requires the State Lands Commission and Attorney General to continue to be involved in public trust type issues where the leased lands are no longer subject to the public trust. This is the first

CALENDAR ITEM NO. **C51**(CONT'D)

instance of a proposed lease being brought before the Commission and Attorney General under Section 6304.1.

BACKGROUND:

The proposed leased lands consists of lands that were involved in a 1980 title settlement agreement (SLL 66) between the State Lands Commission and the Ventura Port District over the extent of State sovereign interest claims involving historic tide and submerged lands within the harbor area. As part of the property exchange agreement, the land and waters that are the subject of the Lease/Option were quitclaimed by the State Lands Commission to the Port District free of the public trust for commerce, navigation and fisheries. Other lands within the harbor area were conveyed to the State and are held subject to the public trust.

As to the lands quitclaimed by the State, the State excepted and reserved certain public access rights to the waters of the harbor involving the dry lands and rights of the public for access and recreational use of the water covered areas. Those public rights were to be at least as comprehensive as provided for in a 1979 Development Plan for the area. The Plan provided for access through the Lease/Option area and around the waterfront area. It also provided for public marine use of portions of the waters within the lease area. Those provisions provided for in the 1979 plan have not been reduced as part of the proposed lease and remain a burden on title.

Subsequent to the 1980 title settlement agreement, the United States Supreme Court in Summa v. California, 466 US 198 (1984) ruled that California was barred from asserting any sovereign property rights within a federally confirmed Spanish or Mexican land grant. The subject property was in such a grant, but the agreement by its terms was not to be affected by any such subsequent ruling. Because these lands are not sovereign lands subject to the public trust, the Commission has no direct jurisdiction over them. There is no fee title or public trust easement that the Commission would have jurisdiction to protect and preserve, only the above described public access and water recreation rights. Nonetheless, section 6304.1 of the Harbors and Navigation Code requires both the Commission and the Attorney General to review and make certain findings regarding the leasing of these lands for residential purposes.

CALENDAR ITEM NO. **C51**(CONT'D)

Section 6304.1 reads in part as follows:

“Notwithstanding any other provisions of law, any port district...may enter into a lease of any portion of its land and water area which has been freed from the public trust for commerce, navigation and fisheries for the development of marine-oriented apartments and townhouses. Such lease ...shall not exceed a term of 50 years, after which time any improvements constructed pursuant to the lease shall revert to the district. Land rental units constructed... shall be available to all persons on equal and reasonable terms. Any such lease shall contain express provisions requiring the lessee to provide reasonable public access across the leased lands to adjacent port water areas.”

“ ...

“Any lease of real property so freed from the public trust which is proposed to be let under the provisions of this section shall first be submitted to the State Lands Commission and the Attorney General for review and approval, and no such lease shall be let unless the State Lands Commission and the Attorney General find that the proposed lease would be in the public interest and would not be in violation of any provision of the California Constitution or of any term of a grant of tidelands or submerged lands and would not be inconsistent with the public trust for commerce, navigation, or fisheries.”

The building of private residences on public trust lands is a violation of the public trust for commerce, navigation and fisheries. As the private residences proposed in this plan are not going to be built on public trust lands, there is no violation of the public trust.

STATUTORY AND OTHER REFERENCES:

- A. Public Resources Code, Div. 6, Parts 1 and 2; Div. 13.
- B. Cal. Code of Regs. Title 2, Div. 3; Title 14, Div. 6.
- C. Harbors and Navigation Code Section 6304.1

OTHER PERTINENT INFORMATION:

CALENDAR ITEM NO. **C51**(CONT'D)

Pursuant to the Commission's delegation of authority and the State CEQA Guidelines [Title 14, California Code of Regulations, section 15060(c)(3)], the staff has determined that this activity is not subject to the provisions of the CEQA because it is not a "project" as defined by the CEQA and the State CEQA Guidelines.

Authority: Public Resources Code section 21065 and Title 14, California Code of Regulations, sections 15060(c)(3) and 15378.

EXHIBIT:

A: Site Map

CONCLUSION:

The 1980 settlement technically terminated any sovereign public trust claims of the state even prior to the decision in Summa barring the State from asserting any sovereign claims within a confirmed rancho grant.

The lease requirements set forth in Section 6304.1 provide: 1) for a maximum lease term of 50 years, after which any improvements on the leased lands will revert to the Port District; 2) that the rental units will be available to all persons on equal and reasonable terms; and 3) that the lease expressly provide for public access across the leased lands to adjacent port water areas.

Staffs of the Commission and the Office of the Attorney General have reviewed the proposed Lease/Option and believe the requirements set forth in Section 6304.1 have been met and based upon their review recommend the following action.

IT IS RECOMMENDED THAT THE COMMISSION:

1. FIND THAT THE ACTIVITY IS NOT SUBJECT TO THE REQUIREMENTS OF THE CEQA PURSUANT TO TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 15060(c)(3) BECAUSE THE ACTIVITY IS NOT A PROJECT AS DEFINED BY PUBLIC RESOURCES CODE SECTION 21065 AND TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 15378.
2. FIND THAT THE LEASE/ OPTION:
 - A. IS IN THE PUBLIC INTEREST.

CALENDAR ITEM NO. **C51**(CONT'D)

- B. DOES NOT VIOLATE ANY PROVISIONS OF THE CALIFORNIA CONSTITUTION.
 - C. DOES NOT VIOLATE ANY TERMS OF A STATUTORY GRANT OF TIDE AND SUBMERGED LANDS.
 - D. IS NOT INCONSISTENT WITH THE PUBLIC TRUST FOR COMMERCE NAVIGATION AND FISHERIES.
3. AUTHORIZE APPROVAL OF THE LEASE/OPTION BETWEEN THE VENTURA PORT DISTRICT AND SONDERMANN RING PARTNERS-VENTURA HARBOR (PARTIES), PURSUANT TO SECTION 6304.1 OF THE HARBORS AND NAVIGATION CODE.


NO SCALE


SITE MAP










**Comprehensive Plan/
Local Coastal Plan (LCP)
Designations**


LEGEND

-  Port District Property Boundary

 Water's Edge
 Parcel Number

Harbor Sub Areas:
 South Peninsula
 Northeast Harbor
 Central Harbor
 Southwest Harbor

All Areas: Harbor Commercial, except:
 Mobile Home Park Designation
 Harbor-Related Mixed Use Designation
 Parks

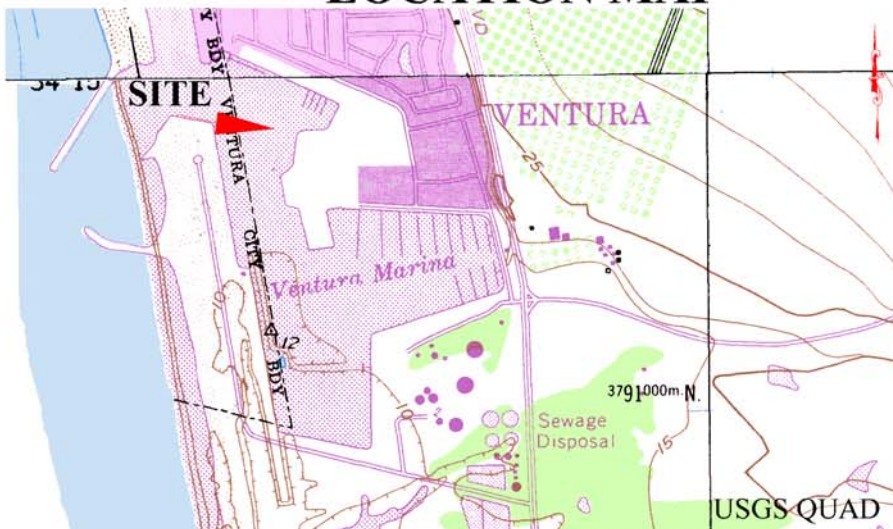
 NORTH

VENTURA HARBOR
MASTER PLAN

VENTURA HARBOR MASTER PLAN

NO SCALE

LOCATION MAP



This Exhibit is solely for purposes of generally defining the lease premises, is based on unverified information provided by the Lessee or other parties and is not intended to be, nor shall it be construed as, a waiver or limitation of any state interest in the subject or any other property.

Exhibit A

SLL 66

VENTURA PORT
DISTRICT
VENTURA COUNTY



JAK 4/02